IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12024 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VIRAMSINH PADAMSINH CHAUHAN

Versus

STATEB OF GUJARAT

Appearance:

1. Special Civil Application No. 12024 of 2001

MR SHAKTISINH GOHIL for Petitioner No. 1

MS PJ DAVAWALA for Respondent No. 4

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 07/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 15th November, 2001 passed by the District Magistrate, Banaskantha at Palanpur in exercise of powers under Section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act. The authority observed that the activities of the petitioner are prejudicial to the maintenance of supplies of essential commodity like kerosene under the public distribution system. After recording satisfaction that less drastic remedy is not posssible to be resorted to and in order that the petitioner may be immediately prevented from pursuing his illegal activities, he is required to be detained under PBM, the impugned order came to be passed.

2. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds stated in the petition. Learned Advocate Mr. Gohil appearing for the petitioner has restricted his argument to the fact that a representation made on behalf of the detenu has not been properly considered. For that purpose he has drawn attention of this Court to ground (l) of the petition. He submitted that one more representation was sent on 7.12.2001 on behalf of the detenu to the detaining authority, that representation was considered belatedly. The right of the detenu is therefore affected and his continued detention would therefore be vitiated.

3. Respondents Nos. 1 to 3 are represented through learned AGP Mr. Joshi. Respondent No.4 is represented by Ms. Dawawala. Respondents have filed their affidavits-in-reply.

4. Mr. Gohil has placed on record a postal acknowledgement indicating that representation was sent on 6.12.2001 to the Minister for Civil Supplies, against this the Government has denied receipt of this representation.

Before the above aspect, one fact emerges from the affidavit-in-reply filed by the detaining authority that a representation dated 7.12.2001 was received by the detaining authority on 10.12.2001 and the same was forwarded to the Government on 12.12.2001. Learned AGP Mr. Joshi after consulting files of the detaining

authority as well as the Government, states that the said representation was received by the Government on 14.12.2001 and it was rejected on 18.12.2001. Mr. Joshi submitted that the said rejection was communicated to the detenu by communication dated 19.12.2001. The representation was therefore pending undisputedly with the Government from 14.12.2001 to 18.12.2001, during this period 16.12.2001 happened to be a Sunday. No explanation is coming forward for the remaining period falling between 14.12.2001 to 18.12.2001. Only explanation that is tendered is that the file was being processed. Under the circumstances, the delay in consideration has also be accepted as a valid ground which has affected the right of the detenu envisaged udner Art. 22 of the Constitution of India. That right having been infringed, continued detention of the detenu would stand vitiated. The petition therefore deserves to be allowed.

5. Order of detention dated 15th November, 2001 passed by the District Magistrate, Banaskantha at Palanpur is quashed and set aside. Detenu Viramsinh Padamsinh Chauhan be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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